

24.01.2023
Court No.13
Item No.11
AP

WPA 59 of 2023
National Restaurant Association of India and Anr.
Vs.
The State of West Bengal and Ors.

Mr. Jaydip Kar
Mr. Jishnu Saha
Mr. Krishnendu Sarkar
Ms. Meghla Das

... For the Petitioners.

Mr. Rajdip Roy
Mr. Anindyasundar Chatterjee
Mr. Goutam Dinda

... For the K.M.C..

The Commissioner of Police, Kolkata has filed a report dated 24th January, 2023 and the same is taken on record. The report is otherwise vague.

The office of the Commissioner of Police, Kolkata has handed over a list of seventeen cases registered against various members of the petitioners for violation of Section 20(2) of the Cigarettes and Other Tobacco Products (Prohibition of Advertisement and Regulation of Trade and Commerce, Production, Supply and Distribution) Act, 2003 [for short "COTP Act 2003"]. The Central Government has framed rules thereunder.

The State Government has not framed any rules as on date. In the absence of any rules under the aforesaid statute neither the Kolkata Municipal Corporation nor the Bidhannagar Municipal Corporation can pass orders against use of Hookahs in bars and restaurants having a valid licence. The said bars and restaurants are, however, required to strictly comply with

the provisions of the COTP Act 2003, other applicable statutes and the rules framed thereunder.

This Court sees that the issue of use of hookahs and the attempt to regulate the same, came to be considered by the Hon'ble Supreme Court in the case of ***Narinder S. Chadha and Ors. Vs. Municipal Corporation of Greater Mumbai and Ors.*** reported in ***(2014) 15 SCC 689*** paragraphs 18 to 22.

Mr. Jaydip Kar, learned Senior Counsel for the petitioner submitted that his clients are strictly complying with the rules and regulations of the aforesaid COTP Act 2003 and other applicable statutes and rules. They only permit use of tobacco, nicotine and herbal products in the hookahs.

Since there is no law banning the use of tobacco, nicotine and herbal products in bars and restaurants, subject to the rules and regulations thereunder, neither the Kolkata Municipal Corporation nor the Bidhannagar Municipal Corporation can restrict the use of hookahs.

This Court cannot ignore the fact that both the State and Central Government earn huge revenues from sale of tobacco products that are lawfully sold in this country.

The question of separate trade license for promoting the use of hookahs for a restaurant or bar does not and cannot arise. Any direction contrary to the above, issued by the Kolkata Municipal Corporation or the

Bidhannagar Municipal Corporation is illegal and bad in law.

The aforesaid order, however, shall not prevent either the Bidhannagar Police or the Kolkata Police for ensuring that other laws are not violated by the restaurant and bar owners.

With the aforesaid directions, the writ petition is disposed of.

There shall be no order as to costs.

All parties shall act on the server copy of this order duly downloaded from the official website of this Court.

(Rajasekhar Mantha, J.)